

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

PARALLEL NETWORKS
LICENSING, LLC,

Plaintiff,

v.

MICROSOFT CORPORATION,

Defendant.

C. A. No. 13-2073-SLR-SRF

JURY TRIAL DEMANDED

MOTION FOR JUDGMENT ON THE PLEADINGS PURSUANT TO RULE 12(c)

Pursuant to Rule 12(c) of the Federal Rules of Civil Procedure, Microsoft moves for partial judgment on the pleadings regarding Plaintiff's claims of infringement for the time period pre-dating the Certificates of Correction of the patents-in-suit. An identical motion was granted by this Court just two months ago on the same two patents against the same Plaintiff. There is no reason why the same ruling by this Court would not control the present litigation and scope of discovery.¹

In a related case, *Parallel Networks Licensing, LLC v. International Business Machines Corporation*, IBM filed a motion for partial judgment on the pleadings on the basis that Plaintiff's assertions of infringement pre-dating the issuance of the existing patent claims through the Certificates of Correction are not valid causes of action upon which relief can be granted. (C.A. No. 13-2072-SLR-SRF (the "IBM case"), D.I. 50, 51 and 61.) Plaintiff opposed, arguing that the errors that were the subject of the Certificate of Correction were apparent from

¹ To avoid motion practice, Microsoft sought a stipulation from Plaintiff that the same ruling regarding pre-issuance liability and discovery is applicable to the litigation against Microsoft. Plaintiff would not agree.

the faces of the patents and that the Court has inherent equitable power to retroactively correct the errors. (*Id.* D.I. 55.) On March 17, 2015, the Court granted IBM's motion, stating that "[w]hile recognizing the harsh result to plaintiff of the PTO's error, the court concludes that it cannot correct the errors in the patents-in-suit, therefore, plaintiff may not recover damages for alleged infringement occurring prior to the issuance of the certificates of correction." (*Id.* D.I. 182 at 8.)

This Court's ruling in D.I. 183 should control the issue. The same two patents and claims are asserted in this case and the IBM case. In the IBM case, after analysis of the issues, this Court found that Plaintiff cannot seek damages under the '544 and '335 patents for alleged infringement occurring prior to the issuance of the certificates of correction. (*Id.*) Plaintiff has not identified any rationale why it is allowed to seek liability against Microsoft when it is precluded from doing so against IBM. Instead, Plaintiff has stated that it cannot stipulate to that effect for fear of waiving its right to appeal. A Rule 12(c) motion may be brought at any time during the course of a litigation provided it does not delay the trial. Fed. R. Civ. P. 12(c). Microsoft therefore requests that this Court enter partial judgment on the pleadings pursuant to Rule 12(c) regarding Plaintiff's claims of infringement for the time period pre-dating the Certificates of Correction of the patents-in-suit for the same reasons raised by IBM (C.A. No. 13-2072, D.I. 50, 51 and 61) and articulated by this Court in that litigation (C.A. No. 13-2072, D.I. 183). Entry of this Order will allow discovery in this case to proceed with the same understanding as to the scope of alleged infringement.²

² Similar overlapping issues (i.e. whether there is liability prior to the Certificates of Correction) are before the Court in two pending motions in this case (C.A. No. 13-2073-SLR-SRF, D.I. 42 and D.I. 69.) If the Court grants Microsoft's current motion, Microsoft will work with Plaintiff on a stipulation addressing the pending related motions, which should be resolved.

Dated: May 18, 2015

FISH & RICHARDSON P.C.

By: /s/ Martina Tyreus Hufnal

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